

Message Text

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ACTION L-03

INFO OCT-01 CA-01 JUSE-00 ISO-00 EUR-12 /017 W
-----057961 271601Z /50
P 271520Z JAN 78
FM AMEMBASSY BONN
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E.O. 11652: N/A
TAGS: PDIP, GW, US
SUBJECT: US-FRG EXTRADITION TREATY

REF: STATE 301719

BEGIN SUMMARY: EMBOFF JANUARY 26 DISCUSSED DEPARTMENT
REFORMULATION OF ARTICLE 2 WITH MINISTRY OF JUSTICE
REPS (POETZ AND WALTER). FINAL AGREEMENT ON TEXT NOW
EXISTS ON ALL BUT ARTICLE 2, FOR WHICH EMBASSY RECOMMENDS
REFORMULATION BASED ON PROBLEM PERCEIVED BY MINISTRY
OF JUSTICE REPS. END SUMMARY

1. WHILE POETZ AND WALTER UNDERSTOOD DEPARTMENT PREFER-
ENCE FOR USING LIST OF OFFENSES AS PRIMARY SOURCE, AND
FORM CONSIDERATION, THEY PERCEIVED POSSIBLE PROBLEM
WITH DEPARTMENT REFORMULATION IN PARA 1 REFTTEL. THEY
FEAR THAT IF AN OFFENSE FOR WHICH EXTRADITION IS SOUGHT
IS LISTED, BUT THE ELEMENTS OF THE OFFENSE ITSELF OR
SUPPORTING DOCUMENTATION ARE NOT COMPLETELY ADEQUATE
FOR EXTRADITION TO BE GRANTED FOR THAT LISTED OFFENSE,
THE DEFENSE COUNSEL MAY CONVINCE THE EXTRADITION JUDGE
THAT HE IS BARRED FROM EXAMINING U.S. FEDERAL LAW TO
DETERMINE WHETHER THE OFFENSE AND DOCUMENTATION INVOLVED
ARE SUFFICIENT TO MAKE EXTRADITION POSSIBLE FOR A
FEDERAL LAW EQUIVALENT OF THE LISTED OFFENSE.

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IN OTHER WORDS, THEY FEAR THAT IF THE OFFENSE IN
QUESTION IS LISTED, THE LANGUAGE IN (B) PROVIDING "NOT
LISTED IN THE APPENDIX" MAY BAR EXAMINATION OF U.S.
FEDERAL LAW FOR A POSSIBLE ALTERNATIVE BASIS FOR
EXTRADITION TO BE GRANTED.

3. EMBOFF STATED THAT THIS EFFECT WAS NOT INTENDED,

AND EVEN IF THIS THEORY WERE ARGUED, THE U.S. ATTORNEY AND EXTRADITION JUDGE WOULD ARGUE AND PROBABLY BELIEVE, RESPECTIVELY, THAT RESORT TO (B) WAS INTENDED AS AN EXPANSION ON THE POSSIBILITIES PROVIDED BY (A) AND ITS AVAILABILITY WAS NOT TO BE PRECLUDED BY THE INCLUSION OF THE OFFENSE IN THE APPENDIX. HOWEVER, EMBOFF HAD TO ADMIT THAT DEFENSE COUNSEL COULD MAKE A PLAUSIBLE SOUNDING ARGUMENT ALONG THE LINES SUGGESTED BY POETZ AND WALTER.

4. AFTER MUCH EXPERIMENTATION WITH GERMAN AND ENGLISH FORMULATIONS THAT GENERALLY PROVED UNTRANSLATABLE, EMBOFF AGREED TO RECOMMEND APPROVAL OF THE FOLLOWING POSSIBLE REFORMULATION OF THE BEGINNING OF (B), (A) REMAINING UNCHANGED:

"(B) OFFENSES, WHETHER LISTED IN THE APPENDIX TO THIS TREATY OR NOT, PROVIDED THEY ARE PUNISHABLE..." ETC.

WHILE THIS TEXT DOES NOT FULLY TAKE ACCOUNT OF THE FIRST TWO SENTENCES OF PARA 2 OF REFTL, IT DOES PLACE THE OFFENSES LISTED IN THE APPENDIX FIRST. EMBASSY DOES NOT BELIEVE THAT TAKING CARE OF THE GERMAN

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CONCERN SUMMARIZED IN PARA 2, ABOVE, AND THEREBY NOT PROVIDING THAT THE LIST MUST BE EXAMINED FIRST AND FEDERAL FELONIES ONLY THEREAFTER, WILL HAVE ANY SUBSTANTIVE EFFECT ON THE OUTCOME OF FRG EXTRADITION REQUESTS EXCEPT THE DESIRED EFFECT. NOR WILL THIS CHANGE AFFECT THE DEPARTMENT'S SCREENING OF U.S. EXTRADITION REQUESTS EMANATING FROM THE STATES.

5. IF THE DEPARTMENT CAN AGREE TO THIS PROPOSAL, AND IF THE FOREIGN OFFICE HAS NO LANGUAGE PROBLEMS WITH THE PROTOCOL OF SIGNATURE, WE WILL HAVE AGREEMENT ON THE ENTIRE TEXT OF THIS TREATY.

6. EMBASSY WOULD PREFER THAT THE TEXT BE TYPED INTO FINAL BY L/T. EMBASSY WILL FORWARD A FINAL DRAFT CHECKED WITH THE FRG TO L/T - ROVINE AND REQUESTS TO BE PROVIDED WITH A PRINT OUT, TO BE CHECKED WITH FRG OFFICIALS FOR ANY FINAL PROBLEMS. ANY CHANGES WOULD BE CABLED TO DEPARTMENT WITH THE TARGET SIGNING MONTH, THE FINAL TEXT ON TREATY PAPER IN BOTH ALTERNATS, BOUND, RIBBONED AND SEALED, BEING POUCHED TO EMBASSY FOR PFUND.
STOESSEL

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